

AN ORDINANCE AMENDING CHAPTER 12.24 OF THE CODE OF LAWS OF THE
CITY OF COLUMBUS, INDIANA AS IT PERTAINS TO
EXCAVATIONS IN PUBLIC STREETS AND RIGHTS OF WAY

WHEREAS, IND. CODE 36-1-3-1 et seq. grants to the City of Columbus, Indiana, all powers that are necessary for the effective operation of government as to local affairs; and

WHEREAS, the Common Council of the City of Columbus, Indiana, has determined that it is in the best interests of the City to regulate the cutting and excavation in public street and rights of way in the City of Columbus, Indiana.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF COLUMBUS, INDIANA, as follows:

SECTION I.
NAME

This Ordinance shall be known as the "Columbus Street Cut Ordinance."

SECTION II.
SCOPE

It shall be unlawful for any person, firm or corporation to cut, dig, trench, excavate, grade, tunnel, bore or in any way disturb any road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place for any purpose whatsoever, or to install any pole in any public street right of way without first filing with the City Engineer a written application for a permit, and without first procuring such permit therefore, executing a bond to cover all damages occasioned by such work, and restoring the place where such work has been done in good condition, and in the manner provided by the terms of the Ordinance; provided, however that in case of an emergency, cutting and excavation may proceed without delay on condition that within twenty-four (24) hours after the commencement of such cutting or excavation, a bond shall be posted, notice of such work shall be given, and a permit shall be applied for and obtained from the City Engineer, all as required under this Ordinance; provided further, however, that:

- A. This ordinance shall not apply to excavations made under contract with or by order of the Board of Public Works and Safety of the City of Columbus through its proper officials, nor to construction of any private entrances, driveways or approaches connecting with any street in the City street system or the installation or replacement of sidewalks, or for the installation of landscaping.
- B. The provisions of this Ordinance pertaining to bonds and fees shall not apply to work being done by any city, town, municipal corporation, or any other county, or by any agency of the state, or by any special taxing or service district established by law, provided that such entities shall give the City Engineer at least twenty-four (24) hours

notice of any such work and shall comply with all other applicable provisions of this Ordinance.

- C. The provisions of the Ordinance pertaining to permits, bonds and fees shall not apply to the setting and maintaining of utility poles and their appurtenances along city street right of way by any public utility whose rates or territories are regulated by the Indiana Utility Regulatory Commission. (Ord. No. 96-55)

SECTION III. PERMIT APPLICATION

Any person, firm or corporation desiring to cut, dig, trench, excavate, grade, tunnel, bore or install any pole, or disturb any road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place, shall make application for a permit therefore, which application shall be presented to the City Engineer for approval at least three (3) days in advance of beginning the work. Said application shall indicate the estimated time or dates during which the cut, dig, trench, excavation, grade, tunnel, bore or pole installation, is to be made, shall describe the estimated kind and dimension in feet and inches of the proposed work, together with the type of road surface, the nature of the opening to be made and the exact purpose of the proposed work; said application shall specifically describe the road, street, alley, sidewalk, curb, roadside ditch, right of way or public place where such work is to be done. The City Engineer shall have the right to prescribe the method of the proposed cut, dig, trench, excavation, grade, tunnel, bore, pole installation, and the location and the time the proposed work shall be performed. Said applicant shall agree in connection with each and every written application for each such permit to do at least the following:

- A. Maintain the road surface, which has been disturbed, in a smooth and uniform condition for a period of one (1) year after traffic is again permitted to pass over such filled trench or maintain the area cut outside the pavement surface but within the right of way, to a condition similar to the immediate surrounding area for a period of one (1) year. The maintenance is to meet the approval of the City Engineer.
- B. Erect and maintain all necessary barricades, detour signs, warning signals and lights by night (in conformance with the Indiana Manual of Uniform Traffic Control Devices – latest edition) required to direct traffic safely over or around the place where such work is being done, so long as the work in any way interferes with traffic. At any location where traffic is limited to one lane, a flagman shall be provided by the permittee.
- C. Take all responsibility for any injury or damage resulting to persons or property because of such work.
- D. Conspicuously display, at the site of such cut, dig, trench or excavation opening, the name and telephone number of the person to whom the permit has been issued, so long as the cut, dig, trench or excavation is open or barricades are in place.

- E. Give notice to the City Engineer prior to every day that excavations are open. If the application is approved, a permit shall be issued by the City Engineer. Such permit shall state the period of time for which the same is issued, shall be numbered and dated, and shall specifically describe the road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place where such work is to be done and describe in detail the work to be done. The City Engineer shall keep on file all such applications and a record of all permits granted. All permits issued in compliance with the terms of this Ordinance shall be made in triplicate, the original of which shall be filed with the City Clerk Treasurer, a copy shall be retained by the City Engineer, and a copy given the applicant for said permit

SECTION IV BOND PROVISIONS

- A. Whenever such application is approved, the applicant shall be required to give a bond to the City of Columbus, with surety to be approved by the City Engineer, which said bond shall guarantee that the place where said work is to be done shall be restored to a condition (including any underground pipes, drains, conduits, or wires) and in the manner provided by the provisions of this Ordinance.
- B. Such bond shall be in the sum of:
1. Two Thousand Dollars (\$2000.00) for each separate cut, dig, trench, excavation, tunnel or bore, which crosses any road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place at an angle of not less than eighty degrees (80°) nor more than one hundred degrees (100°) or for each excavation within the pavement not to exceed 40 square feet in area.
 2. Five Thousand Dollars (\$5000.00) per block or parts thereof, for each separate cut, dig, trench, excavation, tunnel or bore which parallels or crosses any road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place at less than eighty degrees (80°) nor more than one hundred degrees (100°) or for each excavation within the pavement with which exceeds 40 square feet in area.
 3. Five Hundred Dollars (\$500.00) for each pole installed in City right of way. For the purpose of this section, a block shall be a 500 foot long section of street or a section of street between two intersections whichever is shorter.
- C. Such bond shall provide for the surety to guarantee that the principal of said bond shall faithfully perform all the duties imposed upon said principal for each and every cut, trench, excavation, grade, tunnel or bore, or for each and every pole installed in any city right of way according to the requirements of this Ordinance. Such bond shall remain in full force for a period of three (3) years from the date of the completion of the Permittee's work to assure that no hidden damage to drains or other underground structures occurs. No permit shall be issued until such bond has been filed with and approved by the City Engineer. Anything contained herein to the contrary notwithstanding, however, a

cashier's check or certified check payable to the City of Columbus, in the same sum as designated herein for such bond, or a letter of credit issued by a financial institution approved by the Board of Public Works and Safety in said same sum as designated herein for such bond, may be filed with such application in lieu of such surety bond; provided further, however, that public utilities whose rates or territories are regulated by the Indiana Utility Regulatory Commission, and municipal utilities may submit an indemnifying agreement acceptable to the Board of Public Works and Safety providing that the utility shall comply with all the terms and conditions of Ordinance, in lieu of such bond, cashier's check, certified check or letter of credit.

SECTION V. PERMIT EXTENSIONS

The holder of any permit issued which grants permission to cut, dig, trench, grade, excavate tunnel or bore, in or under any road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place, as provided by this Ordinance, shall complete the work and repair the place or places where said work is done within ninety (90) days from the issuance of such permit. The City Engineer may extend the time for the completion of the work for which the permit was granted.

SECTION VI. TIME OF COMPLETION

- A. The holder of any permit issued which grants permission to cut, dig, trench, grade, excavate, tunnel or bore, in or under any road, street, alley, sidewalk, curb, roadside ditch, right of way or other public place, as provided in this Ordinance, shall complete all work including pavement repairs within fourteen (14) calendar days after beginning work at each location on any street which is classified as a primary arterial, secondary arterial, one-way arterial, or collector, and within sixty (60) calendar days after beginning work on all local streets and alleys. The Permittee shall be responsible for making and maintaining the temporary repairs to the satisfaction of the City Engineer until the permanent repairs are completed.
- B. For any excavations made during the period from November 15 through March 15 of each year, if weather conditions do not allow permanent repairs to be completed, the Permittee shall make temporary pavement repairs. Said temporary repairs shall be made with asphalt cold mix and shall be maintained by the Permittee until permanent repairs can be made. Permanent repairs shall be completed prior to the following April 15. All excavations made prior to November 15 shall have permanent repairs completed by November 15 of the same year.

SECTION VII.
EXCAVATION SPECIFICATIONS

- A. All work and repair described herein shall be done in accordance with standards and specifications prescribed by the City Engineer. Before the pavement is replaced said Permittee shall call upon the City Engineer to inspect the work already done before proceeding further.
- B. After said inspection has been made, said Permittee shall complete the work so that the place where excavated will conform to the road, street, sidewalk or alley where such excavation was made as originally improved. All of said work shall be done to the acceptance and satisfaction of the City Engineer.
- C. In cases where any tile drain is cut, crushed or in any other way disturbed so as to render the same in unsatisfactory working order, the Permittee shall cause such structure to be repaired or rerouted according to the standards and specifications of the City Engineer. Permittee shall immediately notify the City Engineer of any underground structures, drains, pipes, conduits or wires struck during the work.
- D. On any street which is classified as a primary arterial, secondary arterial, or one-way arterial and on any street which has been paved or repaved within the last five (5) years, the Permittee shall be required to use a method of installation which will not require the disruption of the pavement unless the Permittee can demonstrate to the City Engineer that such a method is impossible or infeasible.
- E. On any street which is classified as a primary arterial, secondary arterial, one-way arterial, or collector, no work shall be done from 7:00 to 8:30 A.M., from 3:30 to 5:30 P.M., or at any time on a Friday except in the case of an emergency or if specifically allowed by the City Engineer.

SECTION VIII.
ENFORCEMENT

- A. Whenever the Board of Public Works and Safety has reason to believe that a violation of any provision of this Ordinance, or a rule or regulation issued pursuant thereto, has occurred, it may cause a written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of the Ordinance, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than five (5) days after the date such order is served, the person or persons warned may request in writing a hearing before such Board of Public Works and Safety. In lieu of such order the Board of Public Works and Safety may require that the alleged violator or violators appear before it for a hearing at a time and place specified in the notice, to answer the charges complained of, or the Board of Public Works and Safety may initiate appropriate action for the recovery of penalty pursuant to Section X of this Ordinance.

- B. After any hearing held pursuant to Paragraph A above, the Board of Public Works and Safety shall affirm, modify or rescind its order or issue an appropriate order or orders for the prevention, abatement or control of the violation involved. Such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing or abating the violation or violations.
- C. Nothing in this Ordinance shall prevent the Board of Public Works and Safety from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

SECTION X. PENALTIES

- A. Any person, firm or corporation who violates any provision of this Ordinance, or any rule or regulation pursuant thereto shall be subject to a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00). Each day of violation shall constitute a separate offense.
- B. Action pursuant to Paragraph A above of this section shall not be a bar to enforcement of this Ordinance, or any rules and regulations in force pursuant thereto, and orders made pursuant to this Ordinance, by injunction or other appropriate remedy. The Board of Public Works and Safety shall have the power to institute and maintain the same in the name of the City of Columbus any and all such enforcement proceedings.
- C. Nothing in this Ordinance shall be construed to abridge, limit or otherwise impair the right of any persons or property, or to maintain any action or other appropriate proceedings therefore.

SECTION XI. SEVERABILITY

Should any section, subsection, paragraph, sentence, clause, phrase or provision of this Ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the Ordinance in its entirety or of any part thereof other than that so declared to be invalid.

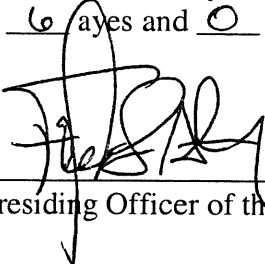
SECTION XII. REPEALER

Chapter 12.24 of the Code of Laws of the City of Columbus, Indiana and all other ordinances, or parts thereof in conflict herewith, are hereby repealed and shall be of no further force and effect.

SECTION XIII.
EFFECTIVE DATE

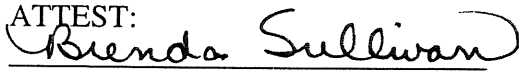
This Ordinance shall become effective on July 1, 2008 subject to its passage, approval and publication according to the laws of the State of Indiana.

ADOPTED BY THE COMMON COUNCIL of the City of Columbus, Indiana on the 17 day of June, 2008 by a vote of 6 ayes and 0 nays.



Presiding Officer of the Common Council

ATTEST:



Clerk of the City of Columbus, Indiana